

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY KINGSTON

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: INCOME TAX TREATY NEGOTIATIONS

1. SUMMARY: SUBSTANTIAL PROGRESS WAS MADE DURING MARCH 6-9, 1978 DISCUSSIONS IN KINGSTON. SEVERAL ISSUES REMAIN TO BE RESOLVED AT NEXT ROUND TENTATIVELY SCHEDULED FOR WASHINGTON, MAY 30-JUNE 2.

2. JAMAICA APPEARS EAGER TO CONCLUDE NEW TREATY BOTH TO PROVIDE TANGIBLE EVIDENCE OF GOJ DESIRE TO ATTRACT U.S. CAPITAL AND BECAUSE COLONIAL FLAVOR OF PRESENT TREATY IS SOURCE OF EMBARRASSMENT TO GOJ.

3. IN EFFORT TO MOVE DISCUSSION U.S. MADE A NUMBER OF CONCESSIONS GIVING JAMAICA EXPANDED RIGHTS, AS SOURCE COUNTRY, TO TAX INCOME OF U.S. PERSONS. THRESHOLDS FOR

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TAXING U.S. FIRMS DOING BUSINESS IN JAMAICA THROUGH BRANCHES (PERMANENT ESTABLISHMENTS) AND FOR U.S. INDIVIDUALS TEMPORARILY IN JAMAICA TO PERFORM SERVICES, SET BELOW LEVELS IN U.S. MODEL TREATY.

4. PRINCIPAL OPEN ISSUES RELATE TO:

A) TREATMENT OF CORPORATIONS INCORPORATED IN U.S. (I.E.,

RESIDENT IN U.S. UNDER U.S. LAW) AND MANAGED AND CONTROLLED

IN JAMAICA (I.E., RESIDENT IN JAMAICA UNDER JAMAICA LAW). NEITHER SIDE WILLING TO ALLOW OTHER'S TEST TO TAKE PRECEDENCE. JAMAICA WANTS COMPETENT AUTHORITIES TO DECIDE ON CASE-BY-CASE BASIS, OR ALTERNATIVELY, TO LEAVE DUAL RESIDENT CORPORATIONS OUT OF TREATY. FIRST ALTERNATIVE UNACCEPTABLE TO U.S. SECOND ALTERNATIVE ALSO TROUBLESOME BECAUSE SOME BAUXITE COMPANIES IN THAT SITUATION, AND IT SEEMS INAPPROPRIATE TO LEAVE MAJOR SECTOR OF ECONOMY OUT OF TREATY.

B) TREATMENT OF DIVIDENDS. U.S. WISHES TO GIVE FURTHER CONSIDERATION TO WHETHER HIGH WITHHOLDING RATE ON SUBSIDIARY DIVIDENDS, AS REQUESTED BY JAMAICA, CONSISTENT WITH JAMAICAN SYSTEM OF CORPORATE/PERSONAL TAX INTEGRATION. ALSO CONSIDERING RATE TO BE APPLIED TO PORTFOLIO DIVIDENDS.

C) U.S. FOREIGN TAX CREDIT FOR JAMAICAN TAXES PAID BY BAUXITE COMPANIES. UNDER U.S. LAW THERE IS SERIOUS QUESTION WHETHER JAMAICAN CORPORATE INCOME TAX PAID BY BAUXITE COMPANIES IS CREDITABLE. (THERE IS NO QUESTION THAT BAUXITE LEVY NOT CREDITABLE UNDER LAW OR TREATY, AND NO REQUEST FOR CREDITABILITY BY GOJ). FOUR FEATURES LEAD TO THIS RESULT: (1) EXPORT OF BAUXITE TAXABLE EVENT WHETHER OR NOT INCOME ACTUALLY REALIZED; (2) FORMULARY LIMITED OFFICIAL USE

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APPROACH (RATHER THAN TRUE NET INCOME CALCULATION) TO DETERMINATION OF TAX BASE; (3) FOR INCOME ON EXPORTED BAUXITE PRODUCTION LEVY NOT ALLOWED AS DEDUCTION; THUS BASE IS NOT NET INCOME FOR A SECOND REASON; AND (4) FOR ALUMINA PRODUCTION INCOME, INCOME TAX CREDITABLE AGAINST PRODUCTION LEVY; THUS LEVY, NOT INCOME TAX, DETERMINES OVERALL GOVERNMENT TAKE.

D) U.S. CREDIT FOR WITHHOLDING TAXES ON DIVIDENDS OF INCENTIVE COMPANIES. LEVEL OF JAMAICAN TAX DETERMINED BY NATURE OF DOUBLE TAX RELIEF IN INVESTORS HOME COUNTRY. RULES DISCRIMINATE AGAINST U.S. INVESTORS, AND THIS DISCRIMINATORY APPLICATION BRINGS CREDITABILITY INTO QUESTION.

E) SEVERAL MINOR ISSUES WHICH WILL BE EASILY RESOLVED WHEN MAJOR ISSUES SETTLED.

5. FINAL PACKAGE MAY TAKE FORM OF U.S. ALLOWING CREDIT FOR JAMAICAN TAXES ON PER COUNTRY BASIS (SO THAT EXCESS JAMAICAN CREDITS CANNOT OFFSET U.S. TAX ON INCOME FROM OTHER COUNTRIES AND VICE VERSA), IN RETURN FOR JAMAICAN

CONCESSIONS ON OTHER ISSUES. VANCE

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